Chevron

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VIA OVERNIGHT MAIL

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Attention: Rules Processing Team

In re: Notice of Proposed Rulemaking
Coastal Zone Consistency Review of Exploration Plans
and Development and Production Plans

Gentlemen:

Chevron U.S.A. Inc. owns and operates numerous oil and gas properties on the Outer Continental Shelf (OCS) which would be subject to this rulemaking. Chevron also has under consideration with the MMS the only Development and Production Plan in the Gulf of Mexico OCS region for which an EIS is currently being performed. Therefore, Chevron has considerable interest in the proposed changes to the existing MMS regulations.

In its summary of the proposed changes, the MMS States their purpose in amending the regulations:

- To specify how States will review Exploration Plans (EP) and Development and Production Plans (DPP) for coastal zone consistency.

DLD/paf:535

- To clarify that State coastal consistency review is accomplished under the authority of the National Oceanic and Atmospheric Administration (NOAA) regulations.

- To give the draft EIS to those States requiring the draft EIS as necessary information to conduct the DPP consistency review.

Chevron contends there is absolutely no reason to change the MMS regulations to implement the ability of a State to require a draft EIS as necessary data and information to perform its coastal consistency analysis. This ability already exists in the implementation of the statutory mandate of the Department of Commerce.

In implementing the Coastal Zone Management Act, the Department of Commerce adopted the following regulations:

§930.78 Commencement of State agency review; public notice.

(a) State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by §930.77 shall not extend the date of commencement of State agency review.

§930.77 Necessary data and information.

(a) The State agency shall use the information received pursuant to the Department of the Interior's operating regulations governing exploration, development and production operations on the OCS (see 30 FR 250.34) and regulations pertaining to the OCS information program (See 30 FR part 252) to determine the consistency of proposed Federal license and permit activities described in detail in OCS plans.

(b) The person shall supplement the information provided by paragraph (a) of this section by supplying the State agency with:

(1) Information required by the State agency pursuant to §930.75(b).

§930.75 State agency assistance to persons; information requirements.

(b) In accordance with the provisions in §930.56(b), the management program as originally approved or amended may describe requirements regarding data and information which will be necessary for the State agency to assess the consistency of the Federal license and permit activities described in detail in OCS plans.

§930.56 State agency guidance and assistance to applicants; information requirements.

(b) The management program as originally approved or amended may describe requirements regarding the data and information necessary to assess the consistency of Federal license and permit activities. . . . If a State does not choose to develop or amend its management program to include information requirements, the applicant must, at a minimum, supply the State agency with the information required by §930.58.

§930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity and its associated facilities which is adequate to permit an assessment of their probable coastal zone effects. Maps, diagrams, technical data and other relevant material must be submitted when a written description alone will not adequately describe the proposal (a copy of the Federal application and all supporting material provided to the Federal agency should also be submitted to the State agency).

(2) Information required by the State agency pursuant to §930.56(b).

(3) A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.

(4) A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. In developing findings, the applicant shall give appropriate weight to the various types of provisions within the management program. While applicants must be consistent with the enforceable, mandatory policies of the management program, they need only demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal zone effects for which the management program does not contain mandatory or recommended policies.

The regulatory implementation of the Coastal Zone Management Act sets up a well thought out process that gives a State a tremendous amount of information and data but protects Federal Agencies and applicants from unreasonable requests. It also allows States to require additional information if they merely go through the process of making known the need for the additional information in their approved Coastal Zone Management Plans. This reasonable approach allows Federal Agencies and applicants the opportunity to know what information and data is required when submitting an application. This is the process currently followed by the MMS and applicants. In most instances, this process has worked well for all concerned, even most States.

The MMS requirements for the submittal of an EP or a DPP are extensive. They appear in 30 CFR §250.200-204. A copy of the regulations as they appear in the Code of Federal Regulations is attached to this letter. The amount of analysis and data which is required from an applicant is extensive enough to allow the MMS to perform their required NEPA review. If it is extensive enough for the MMS to perform its required NEPA review, it certainly contains enough information for a State to perform its consistency review. Furthermore, the applicant is required to draw its own conclusions on impacts from the proposed activity and discuss alternatives to the proposed activity. In the applicant's submittal there is a required discussion on how the activity impacts the State's Coastal Management Plan.

MMS addresses its need to make these rule changes by stating:

> "Lack of an EIS in a State's review of a CZMA consistency certification has contributed to many State objections and a more contentious process than necessary in developing our nation's offshore natural gas and oil."

Chevron believes this Statement is factually incorrect. It is doubtful whether there have been any DPP's filed that could have resulted in approval of consistency by a State if the State had first received a draft EIS. After successful leasing and exploration, development plans are approved by States on the basis of Environmental Assessments which are much less formal and extensive than an EIS. In most situations where conflict with a State occurs an informal process between the Federal Government, the State and the applicant usually results in a resolution of the issue to which a State might have objected. An EIS is conducted on all oil and gas activity at the time the original lease sale is conducted, which is far in advance of any activity that might occur as a result of an EP or a DPP. Thus, a State has ample opportunity to determine whether the activity will impact their Coastal Zone Management Plan far in advance of the actual proposed development activity.

Another fact that seems to be overlooked by these proposed changes is the benefit to the State, the MMS, and the applicant when there is early notification of a State's objection. In performing the environmental analysis which leads to the EIS, it is important for the MMS to know if a State has any valid objections so they can be considered in the EIS process. To wait six months after a draft EIS is issued before receiving that information from the State could cause the EIS process to start over again resulting in considerable delay to the applicant and the permitting agency.

The implementation of this rule would clearly delay the ability of leaseholders in the OCS to permit valid activity that has already been subjected to a stringent review process. This would be a violation of the OCSLA's Stated purpose of orderly and timely development of the important mineral resources of the Outer Continental Shelf. If the rule became effective and was applied retroactively, it would potentially be a violation of existing contractual rights of OCS leaseholders, could potentially be a violation of the rights of those leaseholders under the U. S. Constitution and be an act of bad faith on the part of the Federal Government. For example, Chevron is the applicant in a DPP that was filed with the MMS in November of 1996. That plan has been delayed by the objection of a State that bars any oil and gas activity within 100 miles of its shoreline. If that State had a draft EIS it would have no bearing on its willingness to grant coastal consistency for the plan under review because it has already stated its adamant opposition.

The MMS suggests that this rulemaking is needed to:

> "Providing the State with the maximum available amount of information for the State to concur in the consistency certification by an applicant for a DPP, furthers DOI's efforts to maximize the amount of good science and analysis available to the States in making their important CZMA decisions, to design an OCS program based on consensus, not conflict, and to be good neighbors to the coastal States."

A Draft Environmental Impact Statement or any other information and data will do nothing to allow an activity to be deemed consistent with a State that has adopted a policy which bans any activity within a certain distance to their coast. The change to this regulation proposed in this rulemaking will violate the statutory mandate of the MMS under the OCSLA by imposing an undue and unnecessary burden on applicants and other Federal agencies.

The information and information gathering processes required by existing regulations of both MMS and DOC are extensive and satisfy valid informational needs.

Chevron is opposed to the changes proposed.

Respectfully submitted,

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DLD/paf:535